

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

IN THE MATTER OF:

Lupton Petroleum Products, Inc.,

Respondent.

Proceeding under Section 113 of the  
Clean Air Act, 42 U.S.C. § 7413.

Docket No. CAA-09-2019-3501

**ADMINISTRATIVE COMPLIANCE  
ORDER ON CONSENT**

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

**I. PRELIMINARY STATEMENT**

1. This Administrative Compliance Order (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(a) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3) and (4).

2. The Director of the Superfund Division, Region 9, is delegated the authority to issue this Order under Section 113(a) of the Act, pursuant to EPA Delegation 7-6-A (Aug. 4, 1994) and Region 9 Delegation R9-7-6-A (Feb. 11, 2013).

3. Respondent Lupton Petroleum Products, Inc. (“Respondent”) is an Idaho corporation with its principal place of business in Idaho Falls, Idaho. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. Respondent signs this Order on consent.

5. Under Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), EPA must send a copy of the Order to the State air pollution control agency for the State in which the violation occurs. Upon issuance, EPA will send a copy of this Administrative Order on Consent to the Arizona Department of Environmental Quality and the Navajo Nation Environmental Protection Agency.

**II. STATUTORY AND REGULATORY BACKGROUND**

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely

hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654,

- a. to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques,
- b. to design and maintain a safe facility taking such steps as are necessary to prevent releases, and
- c. to minimize the consequences of accidental releases which do occur.

7. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define “Stationary Source” as, *inter alia*, any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

8. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “Accidental Release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

9. As used herein, the term “extremely hazardous substance” shall mean an extremely hazardous substance within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Such substances include any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury, or property damage because of its toxicity, reactivity, flammability, volatility or corrosivity.

10. As used herein, the term “day” shall mean calendar day.

11. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in the CAA or any of its implementing regulations, in which case the statutory and regulatory definitions apply.

### **III. FINDINGS OF FACT**

12. Respondent operates a facility located at Exit 359 (Grants Road) of Interstate 40 in Lupton, Arizona (the “Facility”). Respondent’s Facility is a small petroleum refining facility. The Facility is behind a truckstop that includes fuel pumps, a restaurant, and a convenience store and is adjacent to a significant roadway.

13. At the Facility, Respondent produces, processes, handles, or stores, and has produced, processed, handled or stored transmix, diesel, and gasoline.

14. Transmix, a highly flammable liquid and vapor, is harmful if inhaled, potentially causing central nervous system depression, drowsiness, or dizziness, and may be fatal if it is swallowed and enters airways. It can also cause skin irritation. It is reactive or incompatible with oxidizing materials. It may be harmful to the environment if released in large quantities.

Transmix may contain gasoline, diesel, kerosene, toluene, 1,2,4-trimethylbenzene, benzene, and n-hexane.

15. Diesel is a flammable liquid and vapor. In a fire or if heated, a pressure increase will occur and the container may burst, with the risk of a subsequent explosion. The vapor/gas is heavier than air and will spread along the ground. Vapors may accumulate in low or confined areas or travel a considerable distance to a source of ignition and flash back. Runoff to sewer may create fire or explosion hazard. It is reactive or incompatible with oxidizing materials. It may be fatal if it is swallowed and enters airways.

16. Gasoline is extremely flammable in liquid and vapor form and reactive or incompatible with oxidizing materials. The vapor/gas is heavier than air and will spread along the ground. Vapors may accumulate in low or confined areas or travel a considerable distance to a source of ignition. It may be fatal if it is swallowed and enters airways. It can also cause serious eye and skin irritation. Gasoline may contain ethanol, toluene, 1,2,4-trimethylbenzene, benzene, and n-hexane.

17. In the event of fires which involve or could involve transmix, diesel, or gasoline, in addition to evacuations, there are specific, recommended fire-fighting measures and protective equipment, including those set forth in Safety Data Sheets, and first responders should be aware of such measures.

18. Due to the dangers associated with these and similar extremely hazardous substances, relevant industries have developed industry standards to control the risks associated with their use. Recognized industry standards and practices include, but are not limited to, those of the Center for Chemical Process Safety ("CCPS"), American Petroleum Institute ("API"), American National Standards Institute ("ANSI"), and the National Fire Protection Agency ("NFPA"). These organizations' standards and recommended practices include, among others:

- a. All relevant CCPS Guidelines, including, but not limited to, those for Hazard Evaluation Procedures, third edition, and for Facility Siting and Layout;
- b. NFPA 70E, Standard for Electrical Safety in the Workplace;
- c. All relevant API Standards, including, but not limited to, 520 and 521;
- d. API Recommended Practices 500 and 752; and
- e. ASME Boiler and Pressure Vessel Code (B&PV Code).

These standards are among the recognized and generally accepted good engineering practices ("RAGAGEP") for the petroleum refining industry.

19. On January 26, 2016, a fire occurred at the Facility. The Facility's incident investigation report indicates that a Facility employee was using a shop vacuum to remove excess gasoline from one of the distillation towers when the hydrocarbons ignited. The fire resulted in minor injuries to two employees, required extinguishment by firefighters, and caused significant damage to Facility equipment that later had to be replaced.

20. EPA conducted an inspection of the Facility on September 20, 2016. As part of the inspection, EPA requested that Respondent make certain records and documents available (or, if unavailable at the time of inspection, submit such records and documents to EPA within thirty (30) days). The findings in this Section were derived in part from observations made during the inspection and review of provided documentation.

21. Based on EPA's inspection and review of the records and documents provided by Respondent, EPA identified potential violations of multiple requirements under CAA Section 112(r)(1). On May 24, 2017, EPA sent Respondent a Notice of Inspection Findings and Request for Information Pursuant to Clean Air Act Section 114 ("Notice of Inspection Findings") identifying each potential violation. The Notice of Inspection Findings is attached as Exhibit A hereto.

22. The recognized industry practice and standard of care for identifying hazards which may result from the accidental release of extremely hazardous substances, using appropriate hazard assessment techniques, is to conduct a hazard review or process hazard analysis, such as a hazard and operability study (HAZOP) or a what-if checklist. For example, RAGAGEP such as the CCPS Guidelines for Hazard Evaluation Procedures, third edition, states that "hazard evaluations are used to pinpoint weaknesses in the design and operation of facilities that could lead to hazardous material releases, fires, or explosions. These studies provide organizations with information to help them improve the safety and manage the risk of their operations." It also states that "[u]sing hazard evaluation techniques is one way to increase a company's understanding of the risk associated with a planned or existing process or activity so that appropriate risk management decisions can be made." The Facility has not conducted a hazard review or process hazard analysis using appropriate hazard assessment techniques. EPA requested the Facility's hazard review or process hazard analysis at the time of the inspection and in follow-up requests, and the Facility has not provided such an analysis or information demonstrating that this duty had otherwise been fulfilled.

23. The recognized industry practice and standard of care for designing and maintaining a safe facility, taking such steps as are necessary to prevent releases of extremely hazardous substances, is to conduct a survey to determine the area electrical classification and communicate this information to operators and to personnel responsible for the design and maintenance of the equipment. For example, RAGAGEP such as API Recommended Practice 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, section 5.1, states that for petroleum facilities, "[s]ubstances handled by petroleum facilities include flammable and combustible liquids, flammable highly volatile liquids (HVLs), and flammable gases and vapors. When classifying locations for electrical installations, the appropriate [National Electrical Code] Groups(s) (A, B, C, or D) should be determined for all flammable liquids, gases, and vapors present." Section 1.2.1 of Recommended Practice 500 states that the recommended practice "...applies to the classification of locations for both temporarily and permanently installed electrical equipment. It is intended to be applied where there may be a risk of ignition due to the presence of flammable gases, flammable liquid-produced vapors, or combustible liquid-produced vapors, mixed with air, under normal atmospheric conditions...." The Facility has not determined the area electrical classification for the distillation equipment, and therefore also has

not communicated to operators the area electrical classification information. EPA requested the Facility's area electrical classification information at the time of the inspection and in follow-up requests, and the Facility has not provided the information requested or demonstrated that this duty had otherwise been fulfilled.

24. The recognized industry practice and standard of care for designing and maintaining a safe facility, taking such steps as are necessary to prevent releases of extremely hazardous substances, is to conduct a siting study to minimize the potential for fire, explosion, or toxic incidents and to minimize the consequences if such incidents occur. For example, RAGAGEP for facility siting such as the CCPS Guidelines for Facility Siting and Layout states, "[a]ppropriate siting and layout separates sources of potential fire, explosion, or toxic incidents from adjacent areas that might become involved in the incident or be harmed by its potential consequences." API Recommended Practice 752, Management of Hazards Associated with Location of Process Plant Permanent Buildings, states that owners and operators should "design, construct, install, modify, and maintain buildings intended for occupancy to protect occupants against explosion, fire, and toxic material releases" and "[b]uildings intended for occupancy shall be included in the building siting evaluation." The Facility has not completed a complete siting study. EPA requested the Facility's siting study at the time of the inspection and in follow-up requests, and the Facility has not provided the information requested or demonstrated that its duty has otherwise been fulfilled.

#### **IV. CONCLUSIONS OF LAW**

25. Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and "owner or operator" of the Facility, as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

26. The Facility is a "Stationary Source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

27. At its Facility, Respondent produces, processes, handles, and/or stores gasoline, diesel, and transmix, substances that are extremely hazardous substances within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

28. Pursuant to Section 112(r)(1) of the CAA, Respondent had, and continues to have, a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

29. Based on the Findings of Fact set forth above, EPA has determined that Respondent failed to satisfy the general duty described in Paragraph 28 above. Therefore, Respondent violated the provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

## V. ORDER

30. Respondent is ordered to conduct the compliance program described in this section of this Order. All actions specified below shall be initiated and completed as soon as feasible, but in no event after the maximum time periods specified herein.

31. As soon as practicable, but in no event later than sixty (60) days from the Effective Date of this Order, Respondent shall submit to EPA a hazard classification survey conducted by a competent and qualified engineer of the distillation process area equipment, including all the distillation equipment, and equipment in, associated with, or near the electrical structure. The survey shall be conducted consistent with API Recommended Practice 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities.

- a. The survey submitted to EPA shall include any recommendations made by the engineer.
- b. The survey submitted to EPA shall include a schedule, subject to EPA's review and approval, under which Respondent shall address any immediate hazards identified by the engineer.
- c. The data from the survey shall be reflected in an area electrical plan that includes the hazard classification of all the distillation equipment.
- d. Respondent shall certify within thirty (30) days from completion of the survey and area electrical classification plan that it has communicated the results of the survey and provided the area electrical plan to all employees and other people who work on or near the distillation process, and that it has a procedure to make the area electrical plan available to all contractors who may work on or near the distillation process in the future.

32. As soon as practicable, but in no event later than sixty (60) days from the Effective Date of this Order, Respondent shall submit to EPA a siting study conducted by a competent and qualified engineer of the distillation process area equipment, including the electrical shed, and the control room. The study shall be conducted consistent with API Recommended Practice 752, Recommended Practice for Management of Hazards Associated with Location of Process Plant Permanent Buildings.

- a. The study submitted to EPA shall include any recommendations made by the engineer.
- b. The study submitted to EPA shall include a schedule, subject to EPA's review and approval, under which Respondent shall address any immediate hazards identified by the engineer.

33. As soon as practicable, but in no event later than thirty (30) days from the submission of the hazard classification survey and siting study to EPA, Respondent shall notify EPA, in writing, of the name, address, and telephone number of a qualified third-party expert selected to conduct an analysis of the hazards associated the distillation process and the type of hazard review the expert proposes to perform, subject to the review and approval of EPA.

34. As soon as practicable, but in no event later than thirty (30) days from the date EPA has communicated its approval of Respondent's selected third-party expert, Respondent shall have its qualified expert conduct a hazard review that incorporates the results of the hazard classification survey, the siting study, and all the appropriate design aspects of the distillation process. The hazard review shall be conducted consistent with CCPS Guidelines for Hazard Evaluation Procedures, third edition. Respondent shall submit the results of the hazard review, including recommendations, to EPA within thirty (30) days from the date EPA has communicated its approval of Respondent's selected expert.

- a. The hazard review submitted to EPA shall include any recommendations made by the qualified expert.
- b. The hazard review submitted to EPA shall include a schedule, subject to EPA's review and approval, under which Respondent shall address any immediate hazards identified by the qualified expert.
- c. Respondent shall certify within thirty (30) days from completion of the hazard review that it has communicated the results of the hazard review to all employees, contractors, or other workers who work on or near the distillation process.

## **VI. GENERAL PROVISIONS**

35. Respondent neither admits nor denies the findings in Sections III and IV (Findings of Fact and Conclusions of Law) of this Order, except that Respondent admits the allegations to the extent that they provide EPA with a jurisdictional basis for bringing the claims alleged herein.

### **A. Parties Bound**

36. Each undersigned representative of the parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the parties to this document.

37. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns, and to all persons, firms, and corporations acting under, through or for Respondent. Respondent shall provide a copy of this Order and all other documents approved under or pursuant to this Order that are relevant to compliance with this Order to each contractor, sub-contractor, laboratory, or consultant retained to perform any work to be performed under Section V of this Order, within five (5) days after the Effective Date of this Order or on the date

such services are retained, whichever date occurs later. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents comply with this Order.

38. From the Effective Date of this Order until the Termination Date as set out in paragraph 73 below, Respondent shall provide a copy of this Order to any prospective purchasers, assignees or successors before a controlling interest in Respondent's assets, property rights or stock are transferred to the prospective owner or successor. Respondent shall notify EPA at least seven (7) days prior to such transfer. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

#### **B. Access and Recordkeeping**

39. Respondent shall provide EPA and its representatives, including contractors, with access to the Facility for the purpose of assessing Respondent's compliance with this Order, the CAA, 40 C.F.R. Part 68, and other applicable laws and regulations. Respondent shall also provide EPA and its representatives, including contractors, with access to all records relating to Respondent's implementation of this Order.

40. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Order for six (6) years after completion of the work required under Section V of this Order. At the end of the six-year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information. Documents and information may be subject to longer retention periods under other federal, state, or local laws or statutes. Nothing in this Order relieves Respondent of the duty to comply with other applicable federal, state, or local laws or statutes.

41. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

42. Respondent may assert that all or part of a record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the record, provided Respondent complies with Paragraph 42.a., and except as provided in Paragraph 42.b.

- a. If Respondent asserts such a privilege or protection, it shall provide EPA with the following information regarding such record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the record's contents; and the privilege or



protection asserted. If a claim of privilege or protection applies only to a portion of a record, Respondent shall provide the record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

- b. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Facility, including, but not limited to, all analytical, monitoring, scientific, chemical, or engineering data, or the portion of any other record that evidences conditions at or around the Facility; or (2) the portion of any record that Respondent is required to create or generate pursuant to this Order.

### **C. Notices and Submissions**

43. Unless this Order states otherwise, whenever, under the terms of this Order, written notice or other document is required to be given, it shall be directed to the individuals specified at the addresses below, with the preference that all communications be made to the included email addresses in lieu of hard copies, unless those individuals or their successors give notice of a change of address to the other party in writing:

As to U.S. EPA:

Donald Nixon (nixon.donald@epa.gov)  
U.S. Environmental Protection Agency  
Superfund Division  
Emergency Prevention and Preparedness Section (SFD-9-3)  
75 Hawthorne St.  
San Francisco, CA 94105

with copies to:

Madeline Gallo (gallo.madeline@epa.gov)  
U.S. Environmental Protection Agency  
Office of Regional Counsel (ORC-3)  
75 Hawthorne St.  
San Francisco, CA 94105

As to Lupton Petroleum Products, Inc.:

Mark Nicholson  
PO Box 50620  
Idaho Falls, ID 83405

with copies to:

Ryan Meikle (rmeikle@bradhallfuel.com)  
General Counsel  
Brad Hall Fuel and Affiliates  
PO Box 50620  
Idaho Falls, ID 83405

All notices and submissions shall be considered effective upon receipt.

44. All submittals made under this Order shall include the following certification, signed by an officer of Respondent:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

45. After the review of any report, schedule, or other item that is required to be submitted pursuant to this Order, EPA shall in writing (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

46. If the submission is disapproved in whole or in part pursuant to Paragraph 45(c) or (d), Respondent shall, within 30 days or such other time as EPA and Respondent agree to in writing, correct all deficiencies and resubmit the report, schedule, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs.

47. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require Respondent to correct any deficiencies, in accordance with the preceding Paragraphs, subject to the right of EPA to seek stipulated penalties as provided in Section H.

48. Any stipulated penalties applicable to the original submission, as provided in Section H, shall accrue during the thirty (30) day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Respondent's obligations under this Order, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

#### **D. Project Coordinator**

*Administrative Compliance Order on Consent  
Lupton Petroleum Products, Inc.*

49. Within three (3) days after the Effective Date of this Order, Respondent shall designate a Project Coordinator for the work to be performed under Section V and shall submit the name, address, telephone number, and qualifications of the Project Coordinator to EPA for review and approval. Respondent's Project Coordinator shall be responsible for overseeing Respondent's implementation of this Order. If Respondent wishes to change its Project Coordinator, Respondent shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator.

50. EPA has designated Donald Nixon as the EPA Project Coordinator. Mr. Nixon may be reached at telephone number (415) 972-3123 and email [nixon.donald@epa.gov](mailto:nixon.donald@epa.gov). EPA has the unreviewable right to change its Project Coordinator. If EPA changes its Project Coordinator, EPA will inform Respondent in writing of the name and contact information of the new Project Coordinator.

51. The Project Coordinators will be responsible for overseeing the implementation of the work to be performed under Section V of this Order. The EPA Project Coordinator will be EPA's primary designated representative for this purpose. To the maximum extent possible, all communications, whether written or oral, between Respondent and EPA concerning the work to be performed pursuant to Section V of this Order shall be directed through the Project Coordinators.

#### **E. Modification**

52. The terms, conditions, and compliance requirements, other than scheduling changes, of this Order may not be modified or amended except upon the written agreement of both parties. The EPA Project Coordinator or the EPA Superfund Division managers may agree to changes in the scheduling of work to be performed under Section V of the Order. Any such scheduling changes must be requested in writing by Respondent and approved in writing by the EPA Project Coordinator or an EPA Superfund Division manager.

#### **F. Delay in Performance**

53. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

54. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone or email to Donald Nixon within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within two (2) business days after notifying EPA by telephone or email, Respondent shall provide to EPA written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order as a result of the delay, the

measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effects of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not a justification for any delay in performance.

**G. Reservation of Rights, Waiver and Compliance with Laws**

55. This Order represents the final form of the agreement between EPA and Respondent. By its consent to entry of this Order, Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of fact, conclusions of law, and determinations in Sections III (Findings of Fact) and IV (Conclusions of Law) of this Order.

56. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

57. All activities by Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable federal, state or local laws and regulations.

58. EPA reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation, the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

59. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under Section 114 of the CAA, 42 U.S.C. § 7414, and any other applicable statutes or regulations.

60. EPA reserves all of its statutory and regulatory powers, authorities, rights, remedies and defenses, both legal and equitable, including the right to disapprove work performed by Respondent pursuant to Section V of this Order and to require that Respondent perform tasks in addition to those required by this Order. EPA reserves its right to seek reimbursement from Respondent for costs incurred by the United States to the full extent allowed by law. This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under any statutory, regulatory or common law enforcement authority of the United States.

61. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, extremely hazardous substance, or other substance on, at, or from the Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the violations referred to in the Findings of Fact and

Conclusions of Law set forth above. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the CAA or any other law. EPA also reserves all of its rights to obtain access to the Facility and require Respondent's submission of information to EPA.

62. If a court issues an order that invalidates or stays any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

#### **H. Enforcement**

63. For each day that Respondent fails to comply with any of the terms or provisions of this Order, EPA may assess, and if so, Respondent shall pay, stipulated penalties in accordance with the terms below. Stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. EPA may provide written notice and a description of those violations for which EPA is assessing stipulated penalties. However, penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Respondent of a violation. Payment shall be due within thirty (30) days of receipt of a demand letter from EPA. Stipulated penalties shall accrue in the following amounts:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$5,000	31st day and beyond

64. Payment of stipulated penalties shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payment shall be made in accordance with instructions provided with the demand letter.

A copy of each check or notification that the payment has been made by one of the methods identified in the payment instructions, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to:

Madeline Gallo  
U.S. Environmental Protection Agency, Region IX  
Office of Regional Counsel (ORC-3)  
75 Hawthorne St.  
San Francisco, CA 94105  
Email: [gallo.madeline@epa.gov](mailto:gallo.madeline@epa.gov)

65. Respondent shall pay interest on any amounts overdue under Paragraph 63. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest will

be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the due date.

66. Respondent's payment of stipulated penalties pursuant to Paragraph 63 above shall not extinguish, waive or otherwise affect Respondent's obligations to comply with any of the terms or provisions of this Order.

67. The stipulated penalties provisions of this Order do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondent's failure to comply with this Order, including, without limitation, civil judicial or administrative penalties under Section 113 of the CAA. Section 113(a)(3) of the CAA provides that, upon failure to comply with an order issued under Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), the EPA Administrator may, *inter alia*: issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$46,192 per day per violation, as provided in Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), as adjusted for inflation at 40 CFR § 19.4; or bring a civil action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for injunctive relief and/or civil penalties of not more than \$97,229 per day for each violation, as adjusted for inflation at 40 CFR § 19.4. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to Sections 113(b) and (d) of the CAA, based on the violations addressed by this Order. Furthermore, any person who knowingly violates the provisions of the CAA, as set forth in Section 113(c), may be subject to criminal penalties or imprisonment, or both, pursuant to Section 113(c).

68. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

69. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

#### **I. Administrative Record**

70. The administrative record supporting this Order shall be available for public review at the U.S. Environmental Protection Agency, Region 9, Emergency Prevention and Preparedness Section (SFD-9-3), 75 Hawthorne Street, San Francisco, CA 94105.

### **VII. EFFECTIVE DATE**

71. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been

provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

### **VIII. JUDICIAL REVIEW**

72. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

### **IX. TERMINATION**


73. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the CAA:

- a. One year after the Effective Date of this Order; or
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order.

*In the Matter of* Lupton Petroleum Products, Inc.  
Docket No. CAA 09-2019-3501

For United States Environmental Protection Agency, Region 9:

25 April 2019  
Date

  
\_\_\_\_\_  
Enrique Manzanilla,  
Director, Superfund Division, Region 9  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
75 Hawthorne St.  
San Francisco, CA 94105



*In the Matter of* Lupton Petroleum Products, Inc.  
Docket No. CAA 09-2019-3501

For Lupton Petroleum Products, Inc.:

4-1-19  
Date

Ch. Hall  
Cole Hall  
Manager  
PO Box 50620  
Idaho Falls, ID 83405

**Exhibit A**  
Notice of Inspection Findings



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105**

**MAY 24 2017**

**Via Email and Certified Mail No.: 7016137000022348237  
7016137000022348244**

**Return Receipts Requested**

**In Reply Refer to:**

Lupton Petroleum Products, Inc.  
Interstate 40, Exit 359 (Grants Road)  
Lupton, Arizona 86508

Brad Hall  
President and CEO  
Lupton Petroleum Products, Inc.  
3875 South American Way  
Idaho Falls, Idaho 83402

Mark Nicholson  
Dale Nicholson Trust  
920 East Highway 66  
Gallup, NM 87301

RE: Notice of Inspection Findings and Request for Information Pursuant to Clean Air Act Section 114 and Clean Water Act Section 308

Dear Messrs. Hall and Nicholson:

On September 20, 2016, representatives from the U.S. Environmental Protection Agency ("EPA") Region IX conducted an inspection of Lupton Petroleum Products, Inc.'s transmixture facility ("Lupton" or "Facility") located at Interstate 40, Exit 359 (Grants Road), Lupton, Arizona 86508, to determine the Facility's compliance with requirements under the General Duty Clause of the Clean Air Act ("CAA") section 112(r)(1), 42 U.S.C. § 7412(r)(1).

A summary of the inspection findings is provided herein for your information and response. These findings describe conditions observed at the Facility at the time of the inspection or based on documents received from Lupton and identify potential areas of noncompliance with the General Duty Clause

under CAA § 112(r)(1). Any omissions in the report shall not be construed as a determination of compliance with those portions of CAA § 112(r)(1) or any other applicable regulations.

With this letter and its enclosures ("Notice of Inspection Findings" and "Information Request"), EPA seeks additional information and documents concerning the Facility's compliance with CAA § 112(r)(1), 42 U.S.C. § 7412(r)(1). This Information Request is authorized pursuant to CAA § 114, 42 U.S.C. § 7414, and CWA §308, 33 U.S.C. §1318. Your responses to this letter must be made by a letter, signed by a person or persons duly authorized to represent your respective corporation or trust. Please send your responses in an electronic format and via certified mail, return receipt requested, so that they are received by May 15, 2017.

Address your submittal to:

Donald Nixon  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne St. (SFD-9-3)  
San Francisco, CA 94105

If you have any questions about the legal aspects of this Information Request, please contact Madeline Gallo, Assistant Regional Counsel, at (415) 972-3539 or [gallo.madeline@epa.gov](mailto:gallo.madeline@epa.gov). The Region IX technical contact for this Information Request is Donald Nixon, EPCRA/RMP Compliance Officer. Mr. Nixon may be reached at (415) 972-3123 or [nixon.donald@epa.gov](mailto:nixon.donald@epa.gov). We thank you in advance for your cooperation.

Sincerely,



Enrique Manzanilla, Director  
Superfund Division

Enclosures  
Notice of Inspection Findings  
Information Request (Instructions, Definitions, Requests)

cc (via email w/enclosure):

Dr. Donald Benn, Navajo Nation Environmental Protection Agency, [donbenn@navajo-nsn.gov](mailto:donbenn@navajo-nsn.gov)  
Raju Bisht, Navajo Air Quality, [rbisht@navajo-nsn.gov](mailto:rbisht@navajo-nsn.gov)  
Harrison Karr, Navajo Nation Department of Justice, [hkarr@nndoj.org](mailto:hkarr@nndoj.org)  
Casey Larsen, Hall and Associates, [clarsen@bradhallfuel.com](mailto:clarsen@bradhallfuel.com)  
Chris Yazzie, Navajo Air Quality, [cayazzie@navajo-nsn.gov](mailto:cayazzie@navajo-nsn.gov)



Enclosure  
**Notice of Inspection Findings**

The findings described below are based on conditions observed at the Facility during the inspection on September 20, 2016, the documents collected at the Facility, and those provided to EPA between September 20 and October 17, 2016. The findings identify potential areas of noncompliance with the requirements under the General Duty Clause in CAA section 112(r)(1) to identify hazards which may result from accidental releases of extremely hazardous substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. *See* 42 U.S.C. § 7412(r)(1). Lupton Petroleum Products, Inc. produces, processes, handles or stores diesel, transmix, and gasoline, which are extremely hazardous substances because they are flammable. *See* EPA, Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) (May 2000) ("GDC Guidance") at 10 n.3, available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>.

**1. Potential Finding: CAA § 112(r)(1) Identify Hazards:**

Lupton did not identify hazards which may result from accidental releases of transmix, diesel, and gasoline using appropriate hazard assessment techniques, in that it has not conducted a Hazard Review or Process Hazard Analysis. Examples of industry standards of care include:

- a. The Center for Chemical Process Safety ("CCPS") Guidelines for Hazard Evaluation Procedures, third edition, "hazard evaluations are used to pinpoint weaknesses in the design and operation of facilities that could lead to hazardous material releases, fires, or explosions. These studies provide organizations with information to help them improve the safety and manage the risk of their operations"; and "Using hazard evaluation techniques is one way to increase a company's understanding of the risk associated with a planned or existing process or activity so that appropriate risk management decisions can be made."
- b. American Petroleum Institute (API) Recommended Practice (RP) 750, Management of Process Hazards, Section 3.1, "A process hazards analysis (PHA) should be performed for any Facility subject to this recommended practice."

**2. Potential Finding: CAA § 112(r)(1) Identify Hazards:**

Lupton did not identify hazards which may result from accidental releases of transmix, diesel, and gasoline using appropriate hazard assessment techniques, in that the Facility has not performed an arc flash risk assessment to determine if a related hazard exists, and post warning signs as needed. An example of an industry standard of care is:

- a. The National Fire Protection Association (NFPA) 70E, Standard for Electrical Safety in the Workplace, section 130.3 states, "Appropriate safety-related work practices shall be determined before any person is exposed to the electrical hazards involved by using both shock risk assessment and arc flash risk assessment"; and section 130.5 states, "An arc flash risk assessment shall be performed and shall: Determine if an arc flash hazard exists. If an arc flash hazard exists, the risk assessment shall

determine: a. Appropriate safety-related work practices; b. The arc flash boundary; [and] c. The PPE [personal protective equipment] to be used within the arc flash boundary.”

### **3. Potential Finding: CAA § 112(r)(1) Identify Hazards:**

Lupton did not identify hazards which may result from accidental releases of transmix, diesel, and gasoline using appropriate hazard assessment techniques, in that the Facility has not identified potential hazards associated with an activation of either of the pressure relief valves (“PRV”s) – on the distillation column or the overhead knockout drum – to determine the possibility of liquid discharge to the atmosphere, near ground level. A liquid discharge of this nature could create a fire hazard. An example of an industry standard of care is:

a. API Standard 521, Pressure-relieving and Depressuring Systems, states, “System design options to deal with liquid overfill include but are not limited to: a) increasing the system design pressure and/or PRD set pressure within pressure design code allowances, b) designing a pressure-relief system that can safely accommodate the overfill (including the effects of operator intervention response as discussed in 4.2.5), c) installing a safety instrumented system (SIS) to prevent the liquid overfill...”; “If volatile components are present, a flammable atmosphere can result. The risk of fire or explosion can be high if appreciable quantities of liquid hydrocarbons are released to the atmosphere when the ambient temperature is at or above the flash point of the liquid. Theoretically, liquids that have a flash point above the maximum anticipated ambient temperature do not vaporize enough to create a flammable atmosphere. However, widespread spraying of oil droplets can create concern in an emergency and constitute a serious nuisance. Also, fires can occur if the liquid comes in contact with very hot lines or equipment. Therefore, all liquid-relief streams should generally be disposed of by one of the methods described in 5.2”; and “a rigorous analysis should be made of the various causes of overpressure on any system containing flammable liquid in which PRVs that vent to the atmosphere are included in the design. All possibilities that can allow liquid to gain entrance to the PRV should be determined and appropriate safeguards should be taken to prevent this occurrence.”

### **4. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases, in that the process safety information does not include adequate information concerning the PRVs and does not include adequate related information concerning the design of the distillation column and related equipment. Examples of industry standards of care include:

a. CCPS Guidelines for Process Safety Documentation states, “A comprehensive compilation of documented information on the process and related safety information enables employers and the employees involved in operating the process to identify, understand and avoid potential hazards. Documentation... includes...information about the equipment and protective systems in the process, including...relief system design and design basis.”

b. API standard 520, Sizing, Selection, and Installation of Pressure Relieving Devices in Refineries, states, “To establish the size and design of a pressure-relief device for any application, the designer shall first determine the conditions for which overpressure protection may be required. Care should be exercised in establishing the various contingencies that could result in overpressure.”

- c. API RP 750, Management of Process Hazards, Section 2.3.1, “mechanical design information should include...the design and basis of the relief system....”

**5. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases and did not protect human health and the environment from the hazards of the process in that, prior to the incident investigation, there were no isolation valves around a distillation tower pump. An example of an industry standard of care is:

- a. The American National Standards Institute (ANSI) 9.6.6, Rotodynamic Pumps for Pump Piping, section 9.6.6.5.2 states “For most pumping systems, an inlet (suction) shut-off valve should be installed in the suction piping for system isolation. Likewise, an outlet (discharge) shut-off valve should be installed in the pump outlet for system isolation.”

**6. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases, in that the process safety information does not include adequate information concerning the design of or specifications for the flexible hoses with respect to rated operating pressure, used in propane service off of the propane bullets. Examples of industry standards of care include:

- a. CCPS Guidelines for Process Safety Documentation states, “A comprehensive compilation of documented information on the process and related safety information enables employers and the employees involved in operating the process to identify, understand and avoid potential hazards.”
- b. NFPA 58, section 5.9 Piping (Including Hose), Fittings, and Valves, subsection 5.9.1.4 states, “Piping that can contain liquid LP-Gas and that can be isolated...shall have an operating pressure of 350 psig or a pressure that is equivalent to the maximum discharge pressure of any pump or other source....”; and Section 6.14.1, “After assembly, piping systems (including hose) shall be tested and proven free of leaks at not less than the normal operating pressure.”

**7. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases, in that Facility process safety information does not include safe operating limits or an evaluation of the consequences of deviations from such limits. Examples of industry standards of care include:

- a. CCPS Guidelines for Process Safety Documentation states, “A comprehensive compilation of documented information on the process and related safety information enables employers and the employees involved in operating the process to identify, understand and avoid potential hazards. Documentation...includes: . . . safe upper and lower limits for parameters such as temperature, pressure, flows or compositions; and evaluation of the consequences of deviations, including those affecting the safety and health of employees.”

- b. API RP 750, Management of Process Hazards, Section 2.2.1, “process design information should include...acceptable upper and lower limits, where acceptable, for items such as temperatures, pressures, flows, and compositions; and the safety-related consequence of deviations.”

**8. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases, in that the employees were not trained in either the hazards of the process or the operating procedures. An example of an industry standard of care is:

- a. CCPS Plant Guidelines for Technical Management of Chemical Process Safety, “Implementation of site-specific training programs is an essential part of a management system to verify that all employees understand the chemical process safety hazards associated with their jobs and the precautions necessary to prevent unplanned incidents. All training programs need to be documented, and a feedback system must be established for plant management including an evaluation procedure to verify that the training program meets plant management objectives for safe operations.”

**9. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases, in that the Facility does not have a program for managing changes. For example, the modifications made to the distillation process such as replacing two towers with one in early 2016 were not managed and documented via a change process. Examples of industry standards of care include:

- a. CCPS Guidelines for Management of Change (“MOC”) for Process Safety states, “Inappropriate changes can affect employee and/or public safety, damage the environment, or result in significant business interruptions. They can also reduce product quality or increase production costs. The desire to decrease the occurrence of change-induced incidents and reduce the cost of doing business motivates companies to create effective MOC systems that will enable them to remain competitive, grow, and prosper. Experience has demonstrated that inadvertent, unintended, erroneous, or poorly performed changes – changes whose risk is not properly understood – can result in catastrophic fires, explosions, or toxic releases.”

- b. API RP 750, Management of Process Hazards, Section 4.3, “Management should establish and implement written procedures to manage change in technology and change in facilities.”

- c. ANSI Z10, Occupational Health and Safety Management Systems, section 5.3, “The organization shall establish a process to identify, and take appropriate steps to prevent or otherwise control hazards at the design and redesign stages, and for situations requiring Management of Change to reduce potential risks to an acceptable level.”

**10. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases and did not protect employees from the hazards of the process in that the incident investigation report for the fire on January 26, 2016 did not identify a cause or causes. Examples of industry standards of



care include:

- a. CCPS Guidelines for Investigating Chemical Process Incidents, "A thorough incident investigation identifies and addresses all of the causes of an incident, including the root causes."
- b. API RP 750, Management of Process Hazards, Section 11.2, "investigation of an incident should address...the factors that contributed to the incident..."
- c. ANSI Z10, Occupational Health and Safety Management Systems, section 6.2, "The organization shall establish a process to report, investigate and analyze incidents in order to address...factors that may be causing or contributing to the occurrence of incidents."
- d. NFPA 921, Guide for Fire and Explosion Investigations, "Fire investigation or analysis and the accurate listing of causes is fundamental to the protection of lives and property from the threat of hostile fire or explosions. It is through an efficient and accurate determination of the cause and responsibility that future fire incidents can be avoided."

**11. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases and did not protect employees from the hazards of the process in that facility did not have or train the operators regarding area electrical classification information. The lack of the information or training may have contributed to the fire, yet this problem was not addressed in the incident investigation report. Examples of industry standards of care include:

- a. API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, section 5.1, states that for petroleum facilities, "Substances handled by petroleum facilities include flammable and combustible liquids, flammable highly volatile liquids (HVLs), and flammable gases and vapors. When classifying locations for electrical installations, the appropriate [National Electrical Code] Groups(s) (A, B, C, or D) should be determined for all flammable liquids, gases, and vapors present"; and section 1.2.1, states that the recommended practice "...applies to the classification of locations for both temporarily and permanently installed electrical equipment. It is intended to be applied where there may be a risk of ignition due to the presence of flammable gases, flammable liquid-produced vapors, or combustible liquid-produced vapors, mixed with air, under normal atmospheric conditions..."
- b. API RP 750, Management of Process Hazards, Section 2.3.1, "mechanical design information should include...the electrical area classification..."

**12. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases, in that the Facility does not have a complete preventative maintenance program. Lupton was unable to provide the EPA with a plan and schedule for conducting thickness testing or mechanical testing of the distillation equipment, vessels, controls and piping. Examples of industry standards of care include:

- a. API 510, API 570, API 572, API 574, API 576, and API 653 all detail requirements for testing and inspection of piping and process vessels, including determining frequencies, and documentation.
- b. CCPS Guidelines for Mechanical Integrity Systems, “Key responsibilities of managers and supervisors in the MI program are to (1) ensure that knowledgeable people are performing appropriate activities using effective engineering and decision-making tools and methods, (2) instill the expectation that the business plan will be fulfilled only within the safe operating limits of the equipment as dictated by its condition, (3) ensure that MI program activities (e.g., inspections and tests) are being executed and managed on schedule and as planned, and (4) ensure that appropriate controls are implemented and maintained within the Facility’s hazard management system for all related MI activities.”

**13. Potential Finding: CAA § 112(r)(1) Design and Maintain a Safe Facility:**

Lupton did not design and maintain a safe facility taking such steps as are necessary to prevent releases, in that the Facility has not performed a siting study to identify and minimize the consequences related to the hazards of a potential release from the distillation tower and overhead accumulations drum atmospheric PRVs, which are near ground level, near the control room, and near the open electrical building, such that if there were a release from the distillation tower or PRVs, it could injure a person in the control room, or the open electrical building could provide a spark to ignite released hydrocarbons. If Examples of industry standards of care include:

- a. CCPS Guidelines for Facility Siting and Layout states, “Appropriate siting and layout separates sources of potential fire, explosion, or toxic incidents from adjacent areas that might become involved in the incident or be harmed by its potential consequences.”
- b. API Recommended Practice 752, Management of Hazards Associated with Location of Process Plant Permanent Buildings, owners and operators should “design, construct, install, modify, and maintain buildings intended for occupancy to protect occupants against explosion, fire, and toxic material releases” and “Buildings intended for occupancy shall be included in the building siting evaluation.”

**14. Potential Finding: CAA § 112(r)(1) Minimize the Consequences of a Release:**

Lupton did not create and implement an emergency response plan or emergency action plan. Examples of industry standards of care include:

- a. CCPS Guidelines for Process Safety Fundamentals in General Plant Operations states, “Advance planning for potential emergencies will help to avoid personal injury or damage to property. A comprehensive emergency management plan will allow quick and effective response and so reduce the consequences of any incident.”
- b. CCPS Guidelines for Auditing Process Safety Management Systems states, “As a minimum...emergency response planning addresses the safe control of processes in emergency conditions, and instructions and training of employees and contractors to minimize risks to life, the environment, and property. The minimum provisions should include:
  - Alarm and notification

- Emergency evacuation and/or shelter
- Spill containment and control
- Loss of critical power and utilities
- First aid medical care, and
- Response procedures to fires, explosions, and chemical releases

[And the plan should] identify that the following basic elements of emergency response planning are in place:

- Identifying hazards
- Education and training
- Planning
- Testing and maintenance
- Conducting drills/exercises, and
- Critique”

c. CCPS Guidelines for Process Safety Documentation states, “An understanding of possible incident scenarios, their potential effects and, perhaps, their likelihood, serves as the basis for rational emergency response planning. Proper planning allows the facility to prepare for dealing with both the incident and its effects.”





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 9**  
**75 Hawthorne Street**  
**San Francisco, CA 94105**

Enclosure

Information Request  
**Lupton Petroleum Products, Inc.**

Please provide the information requested in the Information Request section of this Enclosure such that it is received within 30 days of receipt of this document.

**INSTRUCTIONS**

1. Please provide a separate response to each request, and identify each response by the number of the request to which it corresponds. For each document produced, identify the request to which it is responsive.
2. Knowledge or information that has not been memorialized in any document, but is nonetheless responsive to a request, must be provided in a narrative form.
3. The scope of this Information Request includes all information and documents obtained or independently developed by the Company, its attorneys, consultants or any of their agents, or employees.
4. The Company may not withhold any information from EPA on the grounds that it is confidential business information. EPA has promulgated regulations, under 40 C.F.R. Part 2, Subpart B, to protect confidential business information that it receives. The Company may assert a business confidentiality claim (in the manner specified in 40 C.F.R. § 2.203(b)) for all or part of the information requested by EPA. However, business information is entitled to confidential treatment only if it satisfies the criteria set forth in 40 C.F.R. § 2.208. EPA will disclose business information entitled to confidential treatment only as authorized by 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
5. Notice is hereby given, pursuant to 40 C.F.R. § 2.301(h) that EPA may disclose confidential information provided by the Company to EPA's authorized representatives, including its contractors. Confidential information may be disclosed to EPA's authorized representatives for the following reasons: to assist with document handling, inventory and indexing; to assist with document review and analysis for verification of completeness; and to provide expert technical review of the contents of the response. Pursuant to 40 C.F.R. § 2.301(h), the Company may submit, along with its response to this Information Request, any comments regarding EPA's disclosure of confidential information to its authorized representatives.
6. If information or documents not known or available to the Company at the time of its response to this Information Request later become known or available to it, it must supplement its response to EPA. Moreover, should the Company find at any time after the submission of its response that any

portion of the submitted information is false or misrepresents the truth, the Company must notify EPA as soon as possible and provide EPA with a corrected response.

7. If information responsive to a request is not in the Company's possession, custody, or control, identify the persons or entities from whom such information may be obtained. For each individual or entity that possesses responsive information, please provide the following: name, last known or current address, telephone number, and affiliation with the Company or the Facility.

8. If you believe there are grounds for withholding information or documents that are responsive to this request, e.g., attorney-client privilege, you must identify the information or documents and state the basis for withholding.

## DEFINITIONS

The following definitions apply to the following terms (words or phrases) as they appear in this Information Request. Defined terms are enclosed in quotation marks:

1. "You" or the "Company" shall mean Lupton Petroleum Products, Inc., or its officers, managers, employees, contractors, trustees, partners, successors, assigns, and agents.
2. "Facility" means the Lupton Petroleum Products facility located in Lupton, Arizona, including all buildings, equipment, structures, installations, pipes, or stationary items owned, leased, or operated by the Company, at the property or properties located at: Interstate 40, Exit 359 (Grants Road), Lupton, AZ 86508 or contiguous or adjacent to that address.
3. As used here, "document" and "documents" shall include writings of any kind, formal or informal, whether or not wholly or partially in handwriting (included by way of illustration and not by way of limitation), any invoice, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memoranda of telephone and other conversations (including meetings, agreements and the like), diary, calendar, desk pad, scrap book, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photo-stat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any disc or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such disc or other type of memory). The terms "document" and "documents" include (a) every copy of each document that is not an exact duplicate of a document which is produced, (b) every copy that has any writing, figure or notation, annotation or the like, (c) drafts, (d) attachments to or enclosures with any documents and (e) every document referred to in any other document.
4. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the Clean Air Act or its implementing regulations at 40 C.F.R. Part 68, in which case the statutory or regulatory definitions shall apply.

## INFORMATION REQUEST(S)

1. Provide a response to each Finding in the transmittal letter accompanying this information request as follows:
  - a) If the Company agrees with the factual basis for the Finding, provide compliance status documentation accordingly:
    - i. If the Company is presently in compliance with the cited requirement provide the following information:
      1. The Company's first date of non-compliance;
      2. Description of what activities the Company undertook to come into compliance; and
      3. The date on which the Company came into compliance.
    - ii. If the Company is presently not in compliance with the cited requirement provide the following information:
      1. The Company's first date of non-compliance;
      2. A description of the actions the Company will undertake in order to come into compliance; and
      3. The date by which compliance will be achieved. If multiple issues are listed in a Finding and will not be fixed at the same time, provide a schedule for addressing each issue.
  - b) If the Company disputes the factual basis for the Finding or any portion of the Finding, including the dates asserted for each potential violation, provide the basis and supporting documentation for each such assertion.
2. For each Finding, provide cost information relating to work undertaken, planned, or considered to correct identified deficiencies. Cost information may be either actual or estimated and shall be disaggregated by: a) one-time costs (such as for engineering and permitting); b) capital costs (such as for equipment); and c) incremental annual operation and maintenance costs. For each cost item provided indicate if an actual or estimated cost is provided and include supporting documentation on costs provided.
3. EPA conducted an inspection concerning Lupton Petroleum Products' Spill Prevention, Control, and Countermeasure plan and compliance on May 25, 2016. EPA's Oil Program inspector identified to Lupton Petroleum Products the following two violations in need of correction:
  - a) Two used cooking oil tanks have no secondary containment, in violation of 40 CFR § 112.7(c).
  - b) Cinderblocks were used to support piping at Tank 13, in violation of 40 CFR § 112.8(d)(3), which requires properly designed pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

As of the date of this information request, EPA has not received confirmation that these violations have been addressed, and EPA's Clean Air Act inspectors on September 20, 2016,

observed the same lack of secondary containment for the cooking oil tanks. EPA requests, pursuant to its authority at Clean Water Act section 308, 33 U.S.C. § 1318, that the Company provide a schedule for addressing these violations, or submit photographs demonstrating that they have already been addressed.

4. Provide a description of the corporate ownership and relationship to the operator, including the roles of the primary employees or agents thereof:
  - a) The name of the owner of the transmix facility and tank farms;
  - b) The name of the operator of the transmix facility and tank farms;
  - c) The relationship between the two companies;
  - d) Mark Nicholson's role with respect to the transmix facility;
  - e) Brad Hall's role with respect to the transmix facility;
  - f) Casey Larsen's role with respect to the transmix facility.





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
75 Hawthorne Street  
San Francisco, CA 94105**

Enclosure

**Information Request  
Dale Nicholson Trust**

Please provide the information requested in the Information Request section of this Enclosure such that it is received within 30 days of receipt of this document.

**INSTRUCTIONS**

1. Please provide a separate response to each request, and identify each response by the number of the request to which it corresponds. For each document produced, identify the request to which it is responsive.
2. Knowledge or information that has not been memorialized in any document, but is nonetheless responsive to a request, must be provided in a narrative form.
3. The scope of this Information Request includes all information and documents obtained or independently developed by the Company, its attorneys, consultants or any of their agents, or employees.
4. The Company may not withhold any information from EPA on the grounds that it is confidential business information. EPA has promulgated regulations, under 40 C.F.R. Part 2, Subpart B, to protect confidential business information that it receives. The Company may assert a business confidentiality claim (in the manner specified in 40 C.F.R. § 2.203(b)) for all or part of the information requested by EPA. However, business information is entitled to confidential treatment only if it satisfies the criteria set forth in 40 C.F.R. § 2.208. EPA will disclose business information entitled to confidential treatment only as authorized by 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.
5. Notice is hereby given, pursuant to 40 C.F.R. § 2.301(h) that EPA may disclose confidential information provided by the Company to EPA's authorized representatives, including its contractors. Confidential information may be disclosed to EPA's authorized representatives for the following reasons: to assist with document handling, inventory and indexing; to assist with document review and analysis for verification of completeness; and to provide expert technical review of the contents of the response. Pursuant to 40 C.F.R. § 2.301(h), the Company may submit, along with its response to this Information Request, any comments regarding EPA's disclosure of confidential information to its authorized representatives.
6. If information or documents not known or available to the Company at the time of its response to this Information Request later become known or available to it, it must supplement its response to EPA. Moreover, should the Company find at any time after the submission of its response that any

portion of the submitted information is false or misrepresents the truth, the Company must notify EPA as soon as possible and provide EPA with a corrected response.

7. If information responsive to a request is not in the Company's possession, custody, or control, identify the persons or entities from whom such information may be obtained. For each individual or entity that possesses responsive information, please provide the following: name, last known or current address, telephone number, and affiliation with the Company or the Facility.

8. If you believe there are grounds for withholding information or documents that are responsive to this request, e.g., attorney-client privilege, you must identify the information or documents and state the basis for withholding.

## DEFINITIONS

The following definitions apply to the following terms (words or phrases) as they appear in this Information Request. Defined terms are enclosed in quotation marks:

1. "You" or the "Company" shall mean Dale Nicholson Trust, or its officers, managers, employees, contractors, trustees, partners, successors, assigns, and agents.
2. "Facility" means the Lupton Petroleum Products facility located in Lupton, Arizona, including all buildings, equipment, structures, installations, pipes, or stationary items owned, leased, or operated by the Company, at the property or properties located at: Interstate 40, Exit 359 (Grants Road), Lupton, AZ 86508 or contiguous or adjacent to that address.
3. As used here, "document" and "documents" shall include writings of any kind, formal or informal, whether or not wholly or partially in handwriting (included by way of illustration and not by way of limitation), any invoice, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memoranda of telephone and other conversations (including meetings, agreements and the like), diary, calendar, desk pad, scrap book, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photo-stat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any disc or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such disc or other type of memory). The terms "document" and "documents" include (a) every copy of each document that is not an exact duplicate of a document which is produced, (b) every copy that has any writing, figure or notation, annotation or the like, (c) drafts, (d) attachments to or enclosures with any documents and (e) every document referred to in any other document.
4. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the Clean Air Act or its implementing regulations at 40 C.F.R. Part 68, in which case the statutory or regulatory definitions shall apply.

## INFORMATION REQUEST(S)

1. Provide a response to each Finding in the transmittal letter accompanying this information request as follows:
  - a) If the Company agrees with the factual basis for the Finding, provide compliance status documentation accordingly:
    - i. If the Company is presently in compliance with the cited requirement provide the following information:
      1. The Company's first date of non-compliance;
      2. Description of what activities the Company undertook to come into compliance; and
      3. The date on which the Company came into compliance.
    - ii. If the Company is presently not in compliance with the cited requirement provide the following information:
      1. The Company's first date of non-compliance;
      2. A description of the actions the Company will undertake in order to come into compliance; and
      3. The date by which compliance will be achieved. If multiple issues are listed in a Finding and will not be fixed at the same time, provide a schedule for addressing each issue.
  - b) If the Company disputes the factual basis for the Finding or any portion of the Finding, including the dates asserted for each potential violation, provide the basis and supporting documentation for each such assertion.
2. For each Finding, provide cost information relating to work undertaken, planned, or considered to correct identified deficiencies. Cost information may be either actual or estimated and shall be disaggregated by: a) one-time costs (such as for engineering and permitting); b) capital costs (such as for equipment); and c) incremental annual operation and maintenance costs. For each cost item provided indicate if an actual or estimated cost is provided and include supporting documentation on costs provided.
3. EPA conducted an inspection concerning Lupton Petroleum Products' Spill Prevention, Control, and Countermeasure plan and compliance on May 25, 2016. EPA's Oil Program inspector identified to Lupton Petroleum Products the following two violations in need of correction:
  - a) Two used cooking oil tanks have no secondary containment, in violation of 40 CFR § 112.7(c).
  - b) Cinderblocks were used to support piping at Tank 13, in violation of 40 CFR § 112.8(d)(3), which requires properly designed pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

As of the date of this information request, EPA has not received confirmation that these violations have been addressed, and EPA's Clean Air Act inspectors on September 20, 2016,

observed the same lack of secondary containment for the cooking oil tanks. EPA requests, pursuant to its authority at Clean Water Act section 308, 33 U.S.C. § 1318, that the Company provide a schedule for addressing these violations, or submit photographs demonstrating that they have already been addressed.

4. Provide a description of the corporate ownership and relationship to the operator, including the roles of the primary employees or agents thereof:
  - a) The name of the owner of the transmix facility and tank farms;
  - b) The name of the operator of the transmix facility and tank farms;
  - c) The relationship between the two companies;
  - d) Mark Nicholson's role with respect to the transmix facility;
  - e) Brad Hall's role with respect to the transmix facility;
  - f) Casey Larsen's role with respect to the transmix facility.